This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 4/13/05.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
MARY CAMACHO,	)	
	)	
Complainant,	)	**Charge No. 2001CA2761**
	)	**ALS No. 11802**
	)	
AND	)	
	)	
	)	
DONALD BRUCE & CO.,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is before this tribunal following a public hearing held on April 8th and April 9th, 2004. In accordance with the order issued on July 14th, 2004, Respondent filed its post-hearing brief on August 16th, 2004. For reasons unknown to this tribunal, Complainant has made the decision to not file a post-hearing brief. The matter is now ripe for decision.

HISTORY OF PROCEEDINGS

On June 17th, 2002, the Illinois Department of Human Rights filed a three-count *Complaint of Civil Rights Violation* (Complaint) with the Commission on Complainant Camacho's behalf. That Complaint alleged that Respondent, Donald Bruce & Co., unlawfully discriminated against Complainant Camacho based on her gender (female), her national origin (United States of America) and her marital status (divorced) when Camacho was relieved of her job as a stone setter in the company's Gold Shop. Respondent filed a *Verified Answer* on July 25th, 2002. Respondent's cites a reduction in force, combined with Complainant's lack of versatility as a stone setter, as the reason for her discharge from its employment. After engaging in extensive discovery, the parties filed their *Joint Prehearing Memorandum* on January 7th, 2004. A public hearing

on the matter was conducted on April 8th and April 9th, 2004. At the close of Complainant's case-in chief, Respondent made a motion for a directed finding with regard to Camacho's allegation of marital status discrimination. After careful consideration of the evidence presented, this tribunal granted that motion. Thus, this Recommended Order and Decision addresses the remaining allegations of Complainant's complaint - - unlawful discrimination by Respondent on the basis of Complainant's gender and national origin.

FINDINGS OF FACT

The following findings of fact are based upon the public hearing record in this matter. The record consists of two-hundred and thirty-seven (237) pages of transcript and any exhibits admitted into evidence during the hearing. Factual assertions made at the public hearing, but not addressed in these findings, were determined to be unproven by a preponderance of the evidence or were otherwise immaterial to the issues at hand.

1. Complainant Camacho began her employment with Respondent Donald Bruce & Co. in February of 1988.
2. Complainant was discharged from Respondent's employ in April of 2001.
3. Complainant was hired by Respondent as a stone setter for Respondent's Gold Shop.
4. Complainant's national origin is United States of America.
5. At the time of her discharge in April of 2001, Complainant was the only female stone setter.
6. The other two (2) stone setters working for Respondent were Jaime Garcia (male) and Ramone Rodriguez (male).
7. As stone setters for Respondent, Complainant, Garcia and Rodriguez were responsible for physically inserting jewels (stones) into the actual

gold “setting” on the jewelry product (rings) using various hand tools and equipment.

8. Different types of settings required different types of skills, and not all settings were as simple as others to perform.

9. Complainant is a citizen of the United States of America.

10. Although Complainant was hired as a stone setter, she did spend time performing lesser skilled work such as padding and assembly.

11. Complainant may have done some “bezel setting” while employed by a company named “Tiara”.

12. Complainant began working at “Tiara” in 1977 and worked there for approximately five (5) years.

13. The only time Complainant did not work setting stones for Respondent was when there was not enough work for all three setters. In such an instance, Complainant would perform other duties in other Departments.

14. Complainant’s other duties in other Department’s included “padding”, which in essence was pricing merchandise for retail stores, and sorting diamonds by quality and quantity.

15. Edward Vallero, Respondent’s Gold Shop Foreman, reviewed Complainant’s performance annually.

16. On March 2nd, 1995, Complainant received and signed a performance evaluation prepared and signed by Vallero. In that evaluation, in the “Performance Summary” section under number 2 essential “Areas to be improved/developed”, Vallero hand wrote “Be More aggressive. Example – Learn Bezel Setting”. RX-2.

17. In that March 2nd, 1995 performance evaluation, Complainant did not make any written comments under the “Associate’s Comments” section. RX-2

18. Respondent began experiencing a significant downturn in its business in the late 1990s due to foreign competition.

19. In 1999, Respondent experienced its first reduction-in-force (RIF). Complainant’s position was not affected by this RIF.

20. By 2001, Respondent was experiencing serious financial problems due in part to significant losses in the year 2000, compounded by additional projected losses in the millions of dollars in 2001.

21. Around 2000-2001, multi-million dollar customers of Respondent, like K-Mart, Service Merchandise, Montgomery Ward, Bradley’s and Ames were no longer doing business with Respondent..

22. Around 2000-2001, Respondent’s business to other large clients, like JC Penny and Wal-Mart also began to rapidly deteriorate.

23. Respondent’s decision in 2000-2001 to redirect its focus on smaller independent jewelers in order to save its declining business was unsuccessful.

24. Michael McWilliams, Respondent’s former Vice President of Merchandising Operations, along with Respondent’s Chief Financial Officer and President of the Company began developing a restructuring plan to dramatically reduce costs and save the business.

25. As part of the restructuring plan, McWilliams and senior management considered closing the gold shop, but later decided to keep that part of the business open.

26. Instead of closing the gold shop altogether, McWilliams and senior management believed that they could turn Respondent's business around by shifting its focus from the inexpensive "prong" set jewelry market which had been flooded by foreign competition, to the more costly "bezel" set ring designs which Respondent had copyrighted.

27. In 2001, as part of Respondent's restructuring plan, Respondent implemented a second, company-wide reduction-in-force of thirty-two (32) employees.

28. McWilliams communicated the number of reductions required by each department to his managers. The managers in turn had the responsibility of selecting who would be terminated due to the RIF.

29. McWilliams directed the managers to retain employees with the most versatile skills.

30. As part of the second RIF, employee performance, level of pay and seniority were to be considered by the managers only if employee skills were equal.

31. Respondent, through McWilliams, determined that twelve (12) employees of the Gold Department needed to be terminated, with four (4) of the twelve coming out of the Gold Shop.

32. Mark Sagar, Respondent's Gold Operations Manager, had the responsibility of selecting the employees from the Gold Shop that would be affected by this second RIF in 2001.

33. Of the three (3) stone setter positions within the Gold Shop held by Complainant, Garcia and Rodriquez, Sagar determined that one (1) setter position needed to be eliminated.

34. Sagar chose Complainant for termination as part of Respondent's second RIF because Complainant had the least versatile skills considering Respondent's shift in focus from "prong" settings to "bezel" settings.

35. Sagar reasonably believed that Garcia and Rodriquez were more proficient than Complainant in bezel setting.

36. Sagar first learned of Complainant's lack of proficiency in bezel setting in 2000 from Vallero, Complainant's immediate supervisor.

37. Sagar had personally observed Garcia and Rodriquez perform bezel setting, but had never observed Complainant perform bezel setting.

38. While working for Respondent as a stone setter, Complainant did a very limited amount of bezel setting, if any.

39. While working as setters for Respondent, Garcia and Rodriquez showed more overall skill at bezel setting than did Complainant.

40. Prior to hiring Rodriquez as the third stone setter, Respondent had been outsourcing bezel setting to a third party in New York because Garcia could not keep up with the workload.

41. Complainant worked for Respondent at the time it was outsourcing some its bezel setting work to a third party in New York.

42. Respondent hired Rodriquez in the year 2000 because he had the ability to perform all types of stone settings, including bezel setting.

43. While employed by Respondent, Garcia had taken the initiative to learn other skills, apart from setting stones, including polishing, soldering, maintaining the equipment and performing rhodium plating.

44. In choosing Complainant for the RIF, Sagar took into account the fact that Garcia had taken it upon himself to learn skills apart from just setting stones.

45. While employed by Respondent, unlike Garcia, Camacho did not take the initiative to learn other skills apart from setting stones.

46. On April 20th, 2001, Respondent provided each of the thirty-two (32) employees who were selected for termination pursuant to the second RIF, including Complainant, with a written notice of the reduction-in-force and their termination.

47. As part of its second RIF, Respondent's decision to terminate Complainant in 2001 was based on the work skills she possessed at the time as compared to Garcia and Rodriquez in light of the company's business restructuring plan which would focus on bezel setting.

CONCLUSIONS OF LAW

1. Complainant was an "employee" of Respondent as that term is defined by the Illinois Human Rights Act. 775 ILCS 5/2-101(A).

2. Respondent was an "employer" as that term is defined by the Illinois Human Rights Act. 775 ILCS 5/2-101(B).

3. Complainant failed to prove that Respondent discriminated against her based on her sex (female) when it discharged her from its employ in April 2001.

4. Complainant failed to prove that Respondent discriminated against her based on her national origin (United States of America) when it discharged her from its employ in April 2001.

DISCUSSION

In her complaint, Complainant has alleged that by terminating her in April of 2001 from her position as a stone setter, Respondent violated the Illinois Human Rights Act in that it discriminated against her based on her sex (female), national origin (United

States) and marital status (divorced). During the public hearing and after the close of Complainant's case-in-chief, Respondent made a motion for a directed finding with regard to the allegation of marital status discrimination. That motion was unopposed by Complainant and after careful consideration of the evidence presented the motion was granted. Thus, the two remaining allegations of the complaint- - unlawful sex and national origin discrimination - - are addressed below.

The Illinois Human Rights Act (the Act) prohibits employers from taking adverse job actions against any person on the basis of a discriminatory reason. *775 ILCS 5/1-101 et seq.* A Complainant bears the burden of proving discrimination by the preponderance of the evidence. *775 ILCS 5/1-101 et seq*. That burden may be satisfied by direct evidence that an adverse action was taken for impermissible reasons or through indirect evidence under the paradigm of proof devised by the United States Supreme Court in *McDonnell-Douglas v. Green,* 411 U.S. 793 (1973), and *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981) and adopted by the Illinois Supreme Court in *Zaderaka v. Illinois Human Rights Commission*, 131 Ill.2d 172, 545 N.E.2d 684, 137 Ill. Dec. 31 (1989). Under the *McDonnell-Douglas* analysis, a Complainant may create an inference of unlawful discrimination by establishing a prima facie case by a preponderance of the evidence.

Once a prima facie case is established, Respondent must articulate a legitimate, non-discriminatory reason for the adverse employment action. If the Respondent articulates such a reason, then the inference of discrimination created by the prima facie case is eliminated and the Complainant must prove, by a preponderance of the evidence, that the employer's articulated reason is pretextual for unlawful discrimination. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 113 S. Ct. 2742 (1993*); McDonnell-Corp. v. Green*, Id. The burden of persuasion always rests on the Complainant*. Texas Department of Community Affairs v. Burdine,* Id.

Sex Discrimination

To establish a *prima facie* case of sex discrimination, Complainant had to show that she is a member of a protected class or category (female); that an adverse job action was taken against her; that her job performance met Respondent's reasonable standards; and that Respondent treated similarly situated males differently or more favorably than Complainant was treated. *1998 WL 834764 (Ill. Hum. Rts. Comm.), LaSalle and Norwegian American Hospital*, Charge No. 1995CF2332, ALS No. 9225. In the case at hand, Complainant did establish that she is female, that her job performance met Respondent's reasonable expectations, and that two male stone setters, Garcia and Rodriquez, were retained and that she, the only female stone setter, was discharged as a part of Respondent's second reduction-in-force in April 2001.

Respondent, through the testimony of both Mark Sagar and Michael McWilliams, provided a legitimate, nondiscriminatory reason for choosing Complainant for termination, over Garcia and Rodriquez, as part of this second RIF. McWilliams testified that due to the poor financial condition that Respondent found itself in 2001, a company-wide restructuring of the business was needed and part of that restructuring included a second reduction-in-force. McWilliams credibly testified that he and senior management made the decision to redirect the focus of its stone setting operations to bezel setting because bezel set jewelry generated both a higher profit margin for the company and gave the company a competitive edge as it had bezel set designs protected by copyright.

As part of the second RIF, McWilliams directed his managers to retain employees with the most versatile skill sets that fit in with the restructuring plan that was being put into place to save the company. As noted several times throughout the public hearing transcript, a new focus on bezel setting was part of that plan. Performance,

level of pay and seniority were not to be considered when deciding which employees to terminate unless skill sets were equal.

Sagar, Gold Operations Manager at the time, corroborated McWilliams testimony. McWilliams had charged Sagar with the responsibility of picking twelve (12) employees for termination from the Gold Department as part of the RIF, with four (4) coming from the gold shop. Both McWilliams and Sagar credibly testified that the critical reason that Complainant was chosen for termination over the other two male setters was due to her inability to bezel set stones. In total, thirty-two (32) workers were terminated as part of the company's second RIF.

Once Respondent articulated this legitimate, nondiscriminatory reason for terminating Complainant - - her inability to bezel set stones in light of the company's new focus on bezel setting - - Complainant had the burden of proving by a preponderance of the evidence that this explanation was simply a pretext for sex and national origin discrimination. On this task, Complainant has failed.

Indeed, Complainant has not offered one shred of credible evidence to show that Respondent's explanation for her discharge as part of its second RIF is pretextual. Complainant claims that she is proficient in bezel setting and testified that while working for the Tiara Company in the late 1970s she bezel set fifty (50) to sixty (60) rings. It is difficult for this tribunal to believe Complainant with regard to this point. This is for two (2) reasons: First, Respondent presented testimony that prior to hiring Rodriquez, Respondent was forced to outsource some of its bezel setting work because Garcia could not keep up with the demand. This outsourcing took place even though Complainant worked along side Garcia as a stone setter at the time. Second, Complainant's written performance appraisal dated January 25th, 1995 (Respondent's Exhibit 2) clearly indicates under the heading *Areas to be improved/developed: Essential: Be more aggressive, example – Learn Bezel Set[t]ing.* Complainant signed

this performance appraisal on March 2nd, 1995. Immediately above her signature are the printed words: *This is to certify that I have had an opportunity to review and comment on the performance appraisal.*

Even if Complainant actually did possess some bezel setting skills at the time she worked for Respondent, she put forth no evidence at the public hearing which would prove to this tribunal that she ever performed *any* bezel setting work for Respondent during the course of her employment there. Sagar, on the other hand, testified that while he had observed both Garcia and Rodriquez perform bezel settings, he had never personally observed Complainant perform a bezel setting. Sagar further testified that as Gold Operations Manager he spent a reasonable amount of time observing all of his employees performing their various functions.

On the whole, Complainant has failed to prove by a preponderance of the evidence that Respondent's legitimate, nondiscriminatory explanation for terminating her and not Garcia or Rodriquez is merely a pretext sex discrimination.

National Origin Discrimination

With regard to Complainant's allegation that Respondent discriminated against her based on her national origin (United States), Complainant has failed to establish a *prima facie* case. In order to prove a *prima facie* case of national origin discrimination a Complainant must show that: 1) she is a member of a protected class, 2) she was treated in a particular way by Respondent, and 3) those outside Complainant's class were treated more favorably. 1993 WL 817854 (Ill. Hum. Rts. Com.), *McGee and New World Institute,* Charge No. 1988CF2103, ALS No. 5113.

Complainant has established the first and second elements in that she has shown that her national origin is the United States of America and that she was the stone setter chosen for termination. However, the record is completely devoid of any

evidence showing the national origins of Garcia and Rodriquez. Thus, Complainant fails on her allegation of national origin discrimination as well.

CONCLUSION

Based on the foregoing, I recommend that the instant Complaint (ALS No. 11802) and Charge of Discrimination (Charge No. 2001CA2761) be dismissed with prejudice.

ENTERED: February 24, 2005 **HUMAN RIGHTS COMMISSION**

_____
MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION